

DOCKET NO.: AC 42069
DOCKET NO.: KNLCV16-6026419-S : SUPERIOR COURT
DAVID CROUZET : J.D. OF NEW LONDON
v. : AT NEW LONDON
FIRST BAPTIST CHURCH OF : OCTOBER 3, 2018
STONINGTON, ET AL

MOTION FOR ARTICULATION

Pursuant to Practice Book § 66-5, Plaintiff-Appellant, David Crouzet, hereby moves that the Superior Court, Koleski, Joseph, J.T.R., articulate its Memorandum of Decision (#160.00) dated September 12, 2018, entered judgment in favor of the Defendants-Appellees.¹ Specifically, Plaintiff-Appellant requests that the Court articulate its decision regarding the issue set forth below.

I. BRIEF HISTORY OF THE CASE

This case arises from the contamination of the Plaintiff's property with fuel oil. The Plaintiff alleged that the source of the oil was an underground storage tank (UST) on Defendants' property. According to the Plaintiff, when extended precipitation occurs, water contaminated with oil rises up through the basement floor contaminating the home on Plaintiff's property. The Plaintiff has brought the following claims: Liability under General Statutes § 22a-16; trespass, private nuisance, Liability under General Statute § 22a-452 and breach of contract.

¹ The court rendered an oral decision on the record on August 28, 2018. Subsequently, the transcript of this oral decision was filed by the court as a Memorandum of Decision on September 12, 2018 at Entry No. 160.00.

The Defendants denied that they are liable and asserted a special defense that the statute of limitation has expired. The Plaintiff asserted the existence of a continuing course of conduct in avoidance of the statute of limitations defense raised by the Defendants. On March 10, 2016, the Plaintiff filed suit in the Connecticut Superior Court, Judicial District of New London. The court rendered judgment in favor of the Defendants in an oral decision on the record on August 28, 2018.

II. LEGAL GROUNDS FOR MOTION FOR ARTICULATION

“It is well settled that [a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification. . . . [P]roper utilization of the motion for articulation serves to dispel any . . . ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal. . . .” *J.K. Scanlan Co. v. Construction Group, Inc.*, 80 Conn. App. 345, 352, 835 A.2d 79 (2003).

III. Specific Facts Upon Which the Moving Party Relies

The Plaintiff is unclear on a particular fact articulated by the court in its decision which is an important point implicated in the appeal. The unclear point is in regards to the court's reference to the outdated data utilized from William Warzecha, the supervisor of the Remediation Division for the Department of Energy and Environmental protection. The court stated in its decision that “[w]hile Mr. Warzecha was credible, his data was outdated.” Mr. Warzecha testified that he had reviewed all of the reports produced up to the present time concerning the issues in the case. Moreover, he

testified that he received new information regarding the history of the Plaintiff's property, namely the Home Inspection report from 2004 and photographs of an incident in the basement from 2005, as recently as the week before trial. In contract, the Defendants' expert, Mr. Burgess, did not testify as to having seen this information.

IV. ISSUES FOR ARTICULATION

In order to clarify the factual and legal basis upon which the trial court rendered its decision and to provide an adequate record for appellate review, the Plaintiff-Appellant seeks an articulation of the Court's Memorandum of Decision (#160.00) dated September 12, 2018, entered judgment in favor of the Defendants-Appellees to clarify the following issue:

1. What data of Mr. Warzecha's was outdated?

For all the foregoing reasons, the Plaintiff-Appellate respectfully requests that the Court grant its motion for articulation.

**THE PLAINTIFF-APPELLATE,
DAVID CROUZET**

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CERTIFICATION

Pursuant to Practice Book § 62-7, I hereby certify that:

(1) a copy of the foregoing has been emailed to the following counsel of record
this 3rd day of October, 2018:

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- (2) the foregoing does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law;
- (3) the foregoing complies with all applicable rules of appellate procedure.

/s/ Eric J. Garofano, Esq.
Eric J. Garofano
Commissioner of the Superior Court